

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-204487.3

DATE: July 6, 1982

MATTER OF: Hermes Products, Inc.

DIGEST:

1. Protest against cancellation of solicitation, filed less than 3 weeks after cancellation, is considered timely since record contains no indication that protester was ever given reasons for cancellation. Moreover, protester insists it did not receive notice of cancellation until 1 week before protest was filed. In the circumstances, doubt as to when the protester knew or should have known the basis for protest is resolved in favor of the protester.
2. Cancellation of solicitation which overstated Air Force needs for typewriters cannot be questioned notwithstanding that protester's low bid would actually meet Air Force's needs even though bid is nonresponsive to solicitation. Only responsive bidder under solicitation would be prejudiced by award to low, nonresponsive bidder; moreover, other nonresponsive bidders could also be prejudiced by award.

Hermes Products, Inc. (Hermes), protests the cancellation of invitation for bids (IFB) No. F22600-81-B-0055, issued by the Department of the Air Force (Air Force) for office typewriters. In canceling the IFB, the Air Force sustained, in effect, previous protests by two other bidders that the IFB was unduly restrictive in containing certain specifications which could be met only by one company. Hermes, low bidder under the canceled IFB, contends that it should have received award under the canceled IFB because its typewriter meets the Air Force's actual needs and because all bidders allegedly bid the same typewriter models under both the canceled procurement and the resolicitation of the requirement.

We deny the protest.

Initially, the Air Force maintains the Hermes protest is untimely. Bid opening was on September 10, 1981. However, because of timely protests by other bidders that the specifications were unduly restrictive, the Air Force canceled the IFB on October 21, 1981. The Hermes protest letter was received by our Office on November 10, 1981, more than 10 days after cancellation. Nevertheless, Hermes claims it did not know of the cancellation until November 4, 1981. In any event, we have held that mere notification, without more, of the cancellation of a solicitation (as apparently was the case here) is not sufficient to reasonably convey information as to a possible basis of protest against the cancellation so as to trigger the running of the 10-day protest period. National General Supply, Inc., B-202522, December 28, 1981, 81-2 CPD 498. Moreover, when a reasonable doubt exists as to when a protester knew or should have known of the basis for protest, that doubt is resolved in favor of the protester. Marmac Industries, Inc., B-203377.5, January 8, 1982, 82-1 CPD 22. Therefore, we consider the protest to be timely filed under 4 C.F.R. § 21.2(b)(2) (1982). We now turn to the merits of the case.

The Air Force has informally advised us that Hermes' typewriter does meet its actual needs, although not the overstated needs described in the initial, defective IFB.

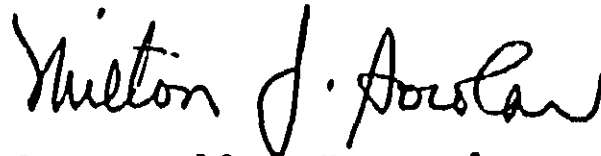
Award may be made under a defective IFB if the Government's needs would be met--as apparently would be true if Hermes were to have been awarded the contract--and if other bidders would not be prejudiced. See, for example, Seaward International, Inc., B-199040, January 16, 1981, 81-1 CPD 23. An award to Hermes, however, would have prejudiced IBM Corporation, which, we understand, submitted the only responsive bid under the defective IFB. See Seaward International, Inc., supra.

Moreover, at the time of the cancellation, the Air Force could also have properly been concerned with the possibility of prejudice to other nonresponsive bidders

had Hermes been awarded the contract. Hermes alleges--from the benefit of hindsight--that all companies bid the same models under both solicitations. Nevertheless, the Air Force cannot be charged with notice of the bidding results under the December 1981 resolicitation when it made the decision to cancel in October 1981.

Therefore, we consider that the Air Force could have reasonably assumed in October 1981 that some of the nonresponsive bidders might bid less expensive models under a reprourement involving relaxed specifications than those bid on the initial procurement. For example, some nonresponsive bidders who, unlike Hermes, may have met the initial IFB's overstated dimensional requirements might well have been expected to offer models more in line with the Hermes larger model dimensions which are now stated to meet the Air Force's needs. This circumstance also supports the decision to cancel the initial IFB.

We deny the protest.



Acting Comptroller General
of the United States